Criminal Appeal No.327-DB of 2002.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision: November 27, 2007.

Ruldu Singh alias Mukhtiar Singh **...** Appellant

VERSUS

State of Punjab **...** Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mrs. Baljit Kaur, Mann, Advocate,
amicus curiae, for the appellant.

Mr. V.K. Jindal, Additional Advocate General, Punjab.

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MOHINDER PAL, J.

Appellant Ruldu Singh alias Mukhtiar Singh son of Tehal Singh has filed this appeal against the judgment of conviction

and sentence order dated September 01, 2001, passed by the learned Additional Sessions Judge, Muktsar, whereby he was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced to undergo rigorous imprisonment for life and a fine of Rs.5,000/- and in default thereof to further undergo rigorous imprisonment for one year.

2. Facts of the case, in brief, are that Randhir Singh (complainant) had his residence in the fields. His sons Maninderpal Singh and Kanwarjit Singh with their families were also residing separately from him in the same house. Naranjan Kaur alias Sukho, widow of Tehal Singh, after the death of her husband, had started residing with his son Gurdip Singh at Jaito. Appellant Ruldu Singh, another son of Naranjan Kaur, who was a simpleton, had also gone to Jaito with her. Four/five months prior to the occurrence, Naranjan Kaur had started cooking work in the house of the complainant and used to sleep in the `Chaubara' in his house. According to the complainant, Ruldu Singh had been missing after borrowing some money from Paramjit Kaur, daughter-in-law of the complainant. Naranjan Kaur used to go out in search of her son Ruldu Singh. Five/six days prior to the occurrence, she brought back Ruldu Singh and started living in the `Chaubara'. On the night of occurrence i.e January 07, 2000, Naranjan Kaur had gone to the `Chaubara' in routine at about 7 P.M with the meals of Ruldu Singh. On January 08, 2000, in the morning at about 8 A.M/8.30 A.M, Paramjit Kaur called

Naranjan Kaur to take her tea. However, she did not have any response. Paramjit Kaur told the complainant and his son Kanwarjit Singh about this. When the complainant and Kanwarjit Singh went to the `Chaubara', they found Naranjan Kaur lying dead with blood oozing from her month and ears. She was having a wound on her right cheek and bluish mark on her neck. Her shawl had been tied around her cot and it was stained with blood. The string of her `Salwar' was also lying untied. The complainant suspected that someone had killed her by strangulation after attempting to commit rape on her. Appellant Ruldu Singh, who had also slept near Naranjan Kaur, was not present there and the cot was lying vacant. After leaving Kanwarjit Singh at the spot, Randhir Singh went to lodge a report with the police. When he reached near the bus stand of Village Lubanianwali, Assistant Sub Inspector Kirpal Singh along with other police officials met him there. His statement (Exhibit P.G) was recorded by Assistant Sub Inspector Kirpal Singh and on its basis First Information Report (Exhibit P.G/2 was recorded. Thereafter, Assistant Sub Inspector Kirpal Singh went to the place of occurrence and prepared inquest report (Exhibit P.H). The dead body of Naranjan Kaur was sent for post mortem examination through Karamjit Singh and Constable Ranjit Singh.

Dr. Varinderpal Singh Medical Officer, Civil Hospital, Muktsar (P.W.1), along with Dr. Meena Jagga, on January 09, 2000, had conducted post mortem examination on the dead

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body of Naranjan Kaur and found the following injuries on her person:-

" 1. Ligature mark in the upper part of the neck, measuring 38 cms in diameter with reddish blue contusion overlying it. There were pressure marks on the neck on the left side, which appeared as depression. On dissection the blood was dark brown in colour. Subcutaneous tissue underlying the ligature mark was ecchymosed. The neck muscle was trickling and carotid arteries were injured.

2. Bluish contusion 2 cms x 1 cm on right maxilla.

3. Bluish contusion 1.5 x 7.5 cm on right side of face, 3 cm from right pinna.

4. Scabbed abrasion measuring 5.5 x 1.5 cm on the back of neck.

5. An incised wound measuring 2 x 1 cm on right little finger on right toe.

6. An incised wound 3 cm x 5 cm on the right little finger of right toe, .75 cm above and parallel to injury No.5.

7. An incised wound 3.5 cm on right little finger of right toe, 5 cms above and parallel to injury No.6." .

According to the Doctor, the cause of death was

asphyxia following strangulation, which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature. The time that elapsed between injury and death was immediate and between death and post mortem was about 36 hours.

After completion of investigation and due formalities, challan against the accused was presented in Court.

3. In support of its case, the prosecution examined Dr.Varinderpal Singh (P.W.1), Dr.Meena Jagga (P.W.2), Randhir Singh complainant (P.W.3), Prem Singh (P.W.4), Assistant Sub Inspector Kewal Singh (P.W.5), Assistant Sub Inspector Kirpal Singh, Investigating Officer (P.W.6), Head Constable Gurmail Singh (P.W.7) and Constable Ranjit Singh (P.W.8).

4. Thereafter, statement of the accused under Section 313 of the Code of Criminal Procedure was recorded wherein he denied the prosecution allegations and pleaded innocence. He stated that it w as a blind murder and he had no concern with it. He further stated that he had not committed the offence because on the alleged date of occurrence he was not present with his mother. He had been falsely involved in this case on the basis of suspicion. No evidence was led in defence.

5. The trial Court, on consideration of material on record, especially the statement of complainant Randhir Singh (P.W.3) and the witness of alleged extra-judicial confession Prem Singh (P.W.4), convicted and sentenced the appellant, as stated in the opening

para of the judgment.

6. We have heard Mrs.Baljit Kaur Mann, Advocate, amicus curiae, for the appellant and Mr.V.K. Jindal, learned Additional Advocate General, Punjab, and have gone through the records of the case with their help.

7. While arguing before us, learned counsel for the appellant has pointed out certain suspicious circumstances in the case. It has been contended that the conduct of complainant Randhir Singh is not free from doubt as the death had taken place in his house. There was inordinate delay in the lodging of the First Information Report as the occurrence had taken place at about 8 A.M/8.30 A.M on January 08, 2000, but the complainant made statement before the police at 7.30 P.M i.e more than eleven hours after the occurrence. She further argued that the alleged extra judicial confession made by appellant Ruldu Singh before Prem Singh (P.W.4) is highly improbable.

8. On the other hand, learned Additional Advocate General, Punjab, reiterated the stand taken in the trial Court and submitted that the impugned judgment and the sentence order deserve to be upheld.

9. Admittedly, Naranjan Kaur alias Sukho (deceased) was the widow of Tehal Singh and after the death of her husband, she started residing at Jaito with her son Gurdip Singh. About four/'five months prior to the occurrence, she had started

working in the house of complainant Randhir Singh and used to sleep in the `Chaubara' of his house. It is also apparent from the site plan (Exhibit P.M) that there is a compound outside the house of the complainant and on the other side of this compound, there is the house of Maninderpal Singh, son of the complainant.

10. The incriminating evidence against appellant Ruldu Singh is the statement of complainant Randhir Singh and the extra judicial confession allegedly made by him before Prem Singh (P.W.4). A perusal of the statement (Exhibit P.G) of complainant Randhir Singh, on the basis of which present First Information Report was recorded, reveals that originally he got recorded that deceased Naranjan Kaur had started residing in his house in the `Chaubara' and used to cook his meals etc. He further stated that his sons Maninderpal Singh and Kanwarjit Singh along with their families were also residing separately from him in the same house. However, while deposing in the Court, Randhir Singh (P.W.3) has tried to make an improvement that his sons Maninderpal Singh and Kanwarjit Singh were residing with him in the same house with their families. This statement of Randhir Singh (P.W.3) does not correspond to the site plan (Exhibit P.M) prepared by Assistant Sub Inspector Kirpal Singh wherein it has been specifically mentioned that opposite to the house of the complainant, there is the house of his son Maninderpal Singh. Further more, in his statement

(Exhibit P.G), Randhir Singh stated that on the day of occurrence, Naranjan Kaur (deceased) had her meals and took the meals of her son to `Chaubara', but in the Court he has tried to make improvement that after having their meals, Naranjan Kaur and her son went to sleep in the `Chaubara' as usual. Further, in his cross-examination, he stated that in the morning, after finding that Naranjan Kaur had died, he went to Gurcharan Singh, Chaukidar, who was nephew of the deceased, and gave information regarding the occurrence, but this fact is missing in his statement recorded under Section 161 of the Code of Criminal Procedure. In his original statement, he stated that string of the `Salwar' of Naranjan Kaur was also lying untied and he suspected that someone had killed her by strangulation after attempting to commit rape on her. However, while deposing in Court, he resiled from his previous statement qua this fact and was, rather, declared hostile on this point. Dr. Meena Jagga, Senior Medical Officer, Government Hospital, Muktsar, who had appeared as P.W.2, stated that on an application (Exhibit P.E) moved by the police, she opined vide Exhibit P.E/1 that rape could not be ascertained in this case. There was no motive for the appellant to kill his mother. Even as per evidence of the complainant, both mother and her son had taken their meals in usual manner. As per Dr.Varinderpal Singh (P.W.1), seven injuries including three incised wounds, as quoted above, were observed on the deceased. However, no

noise had been heard from the room where the occurrence had taken place. Nobody had seen appellant Ruldu Singh going out of the house after commission of the crime. Thus, no implicit reliance can be placed on the statement of complainant Randhir Singh (P.W.3), which goes a long way in creating doubt in the prosecution case. Moreover, he is an interested witness as the murder of Naranjan Kaur alias Sukho, who was working in his house and residing there, had taken place in his house.

11. The other evidence against the accused is that of Prem Singh (P.W.4), who stated that on January 08 or January 09, 2000, the accused had met him at the turning point, Sarainaga and was uttering that he had killed his mother. After that, Prem Singh came to the village at 11 A.M from where it was confirmed that Naranjan Kaur had been killed. It is quite improbable that a person, howsoever simpleton he may be, would be confessing openly, that too before a person with whom he had no concern, that he had committed the murder of his mother. We have perused the statement of the accused recorded by the trial Court under Section 313 of the Code of Criminal Procedure wherein he has given all the answers in such a manner which reveal that he knows the consequences of his answers. Therefore, we discard the theory as propounded by the prosecution through complainant Randhir Singh (P.W.3) that the appellant is a simpleton. The finding recorded by the trial that the two material

witnesses of the prosecution, namely, Randhir Singh and Prem Singh are trustworthy because they had no enmity with the accused seems to be incorrect. The main witness of the prosecution Randhir Singh (P.W.3) was the only person who could have been doubted for the death of Naranjan Kaur as she was residing in his house. The death was unnatural as according to the opinion of Dr.Varinderpal Singh (P.W.1), it was due to asphyxia following strangulation. This is the reason that Randhir Singh had tried to make improvements while deposing in Court that he along with his sons and their families was having a joint mess and was living together in the house along with the deceased, whereas in his statement (Exhibit P.G) recorded under Section 161 of the Code of Criminal Procedure he had stated that his sons Maninderpal Singh and Kanwarjit Singh along with their families were also residing separately from him in the same compound. It may be pointed out that no member of the family of the complainant has come forward to corroborate his statement and corroboration has been sought from Prem Singh (P.W.4) who had allegedly overheard the uttering of the accused that he had committed the murder of his mother. Moreover, as mentioned above, as per site plan (Exhibit P.M) prepared by Assistant Sub Inspector Kirpal Singh, opposite to the house of the complainant, there is the house of his son Maninderpal Singh. Under these circumstances, we are of the opinion that the statements of Naranjan Singh (P.W.3)

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and Prem Singh (P.W.4) do not inspire any confidence.

12. We also agree with the learned counsel for the appellant that there was inordinate delay in lodging of the First Information Report and a made up story had been put forth in this case. As per complainant, he came to know about the murder at about 8 A.M/8.30 A.M on January 08, 2000, but the complainant lodged report before the police at 7.30 P.M i.e more than eleven hours after the occurrence. We have no hesitation to hold that the complainant utilized this time in twisting the facts and implicating the accused for the murder of his mother.

13. The circumstances, enumerated above, prove innocence of the accused and involvement of some other person, who might have made an attempt to commit rape on the victim before murdering her. Consequently, we accept this appeal, set aside the judgment and sentence order, both dated September 01, 2001, passed by the trial Court, and acquit the accused of the charge framed against him.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 27, 2007.
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